

**JUDITH K. CORBER**  
Claimant

**BREWSTER PLACE**  
Respondent

**KANSAS ASSOCIATION OF HOMES  
FOR THE AGING INSURANCE GROUP, INC. )  
Insurance Carrier**

## ORDER

## ISSUES

**Docket No. 205,178**

- (1) Respondent alleges claimant failed to properly submit written claim pursuant to K.S.A. 44-520a.
- (2) Respondent contests claimant's right to medical treatment for a "non-compensable incident."
- (3) Claimant appeals the denial by the Administrative Law Judge of temporary total disability benefits for the incident occurring on March 2, 1994.

**Docket No. 205,179**

Claimant raises the following issues:

- (1) Whether claimant suffered accidental injury on the date alleged.

- (2) Whether claimant's accidental injury arose out of and in the course of her employment.
- (3) Whether claimant provided notice within ten days as required by K.S.A. 44-520.
- (4) Whether just cause was proven as to claimant's failure to give ten day notice as required by K.S.A. 44-520.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for purposes of preliminary hearing, the Appeals Board finds as follows:

Claimant has alleged two separate accidents while employed with respondent. The first on March 2, 1994 occurred when claimant stepped out of a car in respondent's parking lot, slipped on the ice and fell, injuring her back. Claimant was provided medical treatment for a period of time and after several days returned to her employment with respondent. She continued working until the second accident on September 8, 1994 when she alleged she became entangled in a sweeper cord, falling backwards onto her back and suffering injury to her back with additional injury to her neck.

Respondent contests claimant's entitlement to medical benefits for the March 1994 accident alleging claimant failed to submit timely written as required by K.S.A. 44-520a. Claimant alleges she submitted a prescription receipt which she had paid for and requested reimbursement from respondent for Darvocet which was prescribed by Dr. Martin, the authorized treating physician. The medical records of Dr. Martin from March 1994 do confirm claimant was prescribed Darvocet as treatment for her fall. While there is some difficulty in the record as claimant is unable to prove respondent actually paid for the medication, claimant's testimony that she submitted the receipt requesting payment of the medication is sufficient, for preliminary hearing purposes, to satisfy the requirements of K.S.A. 44-520a. The Appeals Board finds, for preliminary hearing purposes, that written claim was submitted within 200 days of claimant's accident on March 2, 1994. Issues (2) and (3) are not among those enumerated in K.S.A. 44-534a as appealable from preliminary hearings. As K.S.A. 44-534a allows an administrative law judge the authority to award both medical treatment and temporary total disability compensation it cannot be successfully argued that the Judge exceeded his jurisdiction in ordering both in violation of K.S.A. 44-551. As such, the Award of Administrative Law Judge Floyd V. Palmer Docket No. 205,178, dated May 8, 1996, should be and is affirmed, and claimant is granted medical treatment with costs assessed to the respondent and its insurance carrier. Claimant will choose from a list of three orthopedic physicians to be submitted by respondent within ten days of this order.

With regard to the incident on September 8, 1994, Docket No. 205,179, respondent has denied that claimant suffered accidental injury arising out of and in the course of her employment on that date and further denied timely notice or just cause as required by K.S.A. 44-520.

Claimant alleged her feet became entangled in a sweeper cord while cleaning an apartment and she fell over backwards, suffering injury to her back and neck. She testified that this information was provided to her supervisor but acknowledges no accident report

was prepared until October 13, 1994. Claimant alleged she advised several witnesses of the incident in September 1994 but the record is void of any witness supporting claimant's allegations. Claimant's supervisor, Dorothy Arnold, denied knowledge of the incident until October 1994 when claimant filled out the accident report. Jeannine Wyatt, director of human resources, also denied any knowledge of the incident until claimant approached her after October 10, 1994 requesting medical treatment. Shelley Will, a housekeeper II employed with respondent not only denied knowledge of the September incident but discussed claimant's attitude and appearance on the alleged date of accident. Apparently claimant was preparing to leave for vacation and was in a very upbeat, excited mood about the opportunity to visit her daughter and her grandchildren. There was also testimony in the record regarding claimant's activities while on vacation in September 1994, in particular, claimant's sledding activities on the white sand.

The burden of proof is upon claimant to establish her right to an award of compensation by proving all the various conditions upon which this right depends by a preponderance of the credible evidence. K.S.A. 44-501 and K.S.A. 44-508(g).

For the date of injury of September 8, 1994, the Appeals Board finds claimant has not proven by a preponderance of the credible evidence that she suffered accidental injury arising out of and in the course of her employment. She also has failed to show that notice was given within ten days of the accident as required by K.S.A. 44-520. No evidence was presented in the record regarding just cause for this failure to provide notice. The Appeals Board finds the Order of Administrative Law Judge Floyd V. Palmer dated May 8, 1996, denying claimant compensation for the injury occurring on September 8, 1994, should be, and is hereby, affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Orders of Administrative Law Judge Floyd V. Palmer in Docket No. 205,178 and Docket No. 205,179 should be, and are hereby, affirmed in all respects and remain in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1996.

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BOARD MEMBER

c: John J. Bryan, Topeka, KS  
Jeffrey A. Chanay, Topeka, KS  
Floyd V. Palmer, Administrative Law Judge  
Philip S. Harness, Director